



THE ATTORNEY GENERAL
OF TEXAS

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AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

November 29, 1951

Hon. A. K. Stewart
County Attorney
Montgomery County
Conroe, Texas

Opinion No. V-1359

Re: Legality of using county permanent improvement funds to remove brush and trees from the county airport.

Dear Mr. Stewart:

Your request for an opinion is as follows:

"During the years of 1942 and 1943, Montgomery County constructed an airport which was later taken over by the Federal Government for the duration of the war. When World War II was over, the Federal Government turned said airport back over to Montgomery County. During these years, trees and underbrush were allowed to grow on the airport and now have grown to such an extent that it becomes necessary that they be removed.

"The Commissioners' Court of this County has requested an opinion as to whether or not the payment for the removal of the trees and underbrush from the airport may be made from the county permanent improvement fund."

Section 2a of Article 1269h, V.C.S., authorizing the establishment of a county airport, provides:

"For the purpose of condemning or purchasing, either or both, lands to be used and maintained as provided in Section 1 hereof, and improving and equipping the same for such use, the governing body of any city or the Commissioners Court of any county, falling within the terms of such Section, may issue negotiable bonds of the city or of the county, as the case may be, and levy taxes to provide for the

interest and sinking funds of any such bonds so issued, the authority hereby given for the issuance of such bonds and levy and collection of such taxes to be exercised in accordance with the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of 1925."

Section 4 of Article 1269h, V.C.S., provides:

"That in addition to and exclusive of any taxes which may be levied for the interest and sinking fund of any bonds issued under the authority of this Act, the governing body of any city or the Commissioners' Court of any county, falling within the terms hereof, may and is hereby empowered to levy and collect a special tax not to exceed for any one year five cents on each One Hundred Dollars for the purpose of improving, operating, maintaining and conducting any Air Port which such city or county may acquire under the provision of this Act, and to provide all suitable structures, and facilities therein. Provided that nothing in this Act shall be construed as authorizing any city or county to exceed the limits of indebtedness placed upon it under the Constitution."

Section 9, Article VIII of the Constitution of the State of Texas provides in part:

"The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed thirty-five (35) cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five (25) cents for city or county purposes, and not exceeding fifteen (15) cents for roads and bridges, and not exceeding fifteen (15) cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred

prior to the adoption of the Amendment September 25, 1883; and for the erection of public buildings, streets, sewers, waterworks and other permanent improvements, not to exceed twenty-five (25) cents on the one hundred dollars valuation, in any one year, and except as is in this Constitution otherwise provided; . . . " (Emphasis added.)

In Bexar County v. Mann, 138 Tex. 99, 157 S.W.2d 134 (1941), the Court said:

"All county expenditures lawfully authorized to be made by a county must be paid out of the county's general fund unless there is some law which makes them a charge against a special fund."

This office held in Attorney General's Opinion O-6762 (1945) that structural improvement done on the runways of a county airport would be in the nature of a permanent improvement and could be paid for from the permanent improvement fund. This opinion further states:

"It is our opinion that the expenditures for salaries should be allocated as a part of the levy for general purposes, and in no event should such allocations have the effect of increasing the total levy for general purposes beyond the constitutional limits for such purposes.

"Also, we point out that the total amount of the allocation or levy for the purposes of improving, operating, maintaining and conducting the airport, and to provide suitable structures and facilities therein should not exceed for any one year the limit of five (5) cents on the one hundred dollars valuation, even though a part of such amount may be allocated as a part of the levy for general purposes and a part allocated as the levy for permanent improvement."

In a similar situation, this office held that the purchase and improvement of a county park should be paid from the county permanent improvement fund, but the day-by-day operating and maintenance expense should be charged to the general fund. Att'y Gen. Ops. V-284 (1947) and O-1082 (1939).

In Attorney General's Opinion V-744 (1948) it is stated:

"Tax levied for park improvements is a charge against the county permanent improvement fund and that levied for maintenance is a charge against the county general fund."

From the facts set out in your request we see that the operation of clearing the brush is not for the purpose of establishing the airport or improving the property in connection with establishing the airport. It is an operation of maintenance, and is not a permanent improvement as contemplated by Section 9, Article VIII of the Constitution of the State of Texas.

The law is well settled that the commissioners' court cannot levy a tax for one purpose and use the money for another. It has no power to transfer moneys raised under constitutional levies from one fund to another. Ault v. Hill County, 102 Tex. 335, 116 S.W. 359 (1909); Sanders v. Looney, 225 S.W. 280 (Tex. Civ. App. 1920); Att'y Gen. Op. O-5595 (1945). In Carroll v. Williams, 109 Tex. 155, 202 S.W. 504, 509 (1918), the Court stated:

"Taxes levied ostensibly for any specific purpose or class of purposes designated in section 9 of article VIII, supra, must be applied thereunto, in good faith; and in no event and under no circumstances may there be expended, legally, for one such purpose or class of purposes, tax money in excess of the amount raised by taxation declaredly for that particular purpose or class of purposes."

It is therefore our opinion that moneys in the county permanent improvement fund must be

expended solely for permanent improvements and may not be spent to clear brush and trees from the county airport when this clearance is not of the nature of a permanent improvement as contemplated by Section 9, Article VIII of the Constitution of the State of Texas.

SUMMARY

Funds in the county permanent improvement fund must be spent solely for permanent improvements and may not be expended for the purpose of clearing brush and trees from a county airport when this work is not of the nature of a permanent improvement as authorized by Section 9, Article VIII of the Constitution of Texas.

APPROVED:

J. C. Davis, Jr.
County Affairs Division

Everett Hutchinson
Executive Assistant

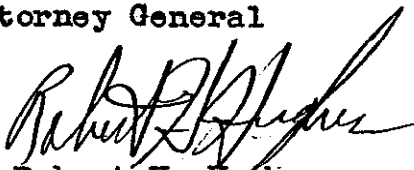
Charles D. Mathews
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RHH:mh

Yours very truly,

PRICE DANIEL
Attorney General

By


Robert H. Hughes
Assistant